Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

YILING ZHANG,

Petitioner,

V.

INLAND REGIONAL CENTER,

Respondent.

On Petition for a Writ of Certiorari
To the California Court of Appeal
4th Appellate District Div.2

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In this case, an agency of California demanded quarterly visit Petitioner's home because her disabled child was its client. The administrative hearing officer upheld the agency's authority under the Lanterman Developmental disability Act, although the child's disability condition and need of service were found not in question. Parent appealed in state courts. The Court of Appeal dismissed Parent's appeal, effectively denying that Parent has any interest protected by the Constitution while Parent asserted that the legislature backing the administrative hearing decision violated the Fourth and Fourteenth Amendment.

The question presented:

Whether the Lanterman Act, as construed and applied, infringed Parent's liberty interest in the sanctity of home and the privacies of life, in violation of the Due Process Clause of the Fourteenth Amendment and the Fourth Amendment of the U.S. Constitution, when it authorizes social workers to conduct warrantless home entry to intervene and monitor their family life without constitutional safeguard; and authorizes agency to inactivate their children's cases if their parents choose to exercise constitutional rights.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Yiling Zhang respectfully petition for a writ of certiorari to the Court of Appeal of the State of California Fourth Appellate District, No. E049230.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division 2, No. E049230 (App. 1a-7a) is unpublished. The superior court did not issue any written opinion.

JURISDICTION

The opinion of the Court of Appeal of the State of California was filed on Aug.31, 2010. California Supreme Court's order denying petition for review was filed on Nov.17, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a)

RELEVANT CONSTITUTIONAL PROVISION AND STATUTORY PROVISION

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV.

The Fourteenth Amendment to the United States Constitution provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

California Welfare and Institution Code (January 2007) provides:

> "The Legislature finds that the service provided

to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers." Cal. Welf. & Inst. Code § 4620(b)

"Notwithstanding subdivision (c) of Section 1 of Chapter 501 of the Statutes of 1971, the department shall, within the limitations of funds appropriated, contract with an appropriate private nonprofit corporation or corporations to operate regional centers as follows: ...(b)One regional center [1] to service the Counties of Riverside and San Bernardino." Cal. Welf. & Inst. Code § 4621.5

"An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation." Cal. Welf. & Inst. Code § 4646(g)[2]

"The planning process for the individual program plan described in Section 4646 shall include....[a] schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or **other resources** [3] ...and identification of the

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[1] Inland Regional Center has got the contract since 1970's

[2] The ALJ interpreted that "4646, subdivision (g)'s referral to 'the plan' means the agency's plan as articulated in the IPP it drafts " (Decision;p 8)

[3] Regional center does not pay for services that provided by generic agencies and other resources including natural supports.

provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and **natural supports.**" Cal. Welf. & Inst. Code § 4646.5(a)(4) (Emphasis added.)

" 'Natural supports' means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, **family relationships**, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities." Cal. Welf. & Inst. Code § 4512(e) (Emphasis added.)

"The regional center or its designated representative shall (a) guide and counsel facility staff regarding the care and services and supports required by each consumer served by the regional center; and (b)**monitor** the care and services and supports provided the individual to ensure that care and services and supports are provided in accordance with the individual program plan. Cal. Welf. & Inst. Code § 4742, Chapter 7.5 Residential Care Facility Appeals Procedures[4]

STATEMENT OF THE CASE

This case arises under the Constitution of the United States since "its correct decision depends upon the construction" of the Constitution of the

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[4] Although no residential care facility involved in this case, IRC claimed that this law applied and justified its quarterly home visit

United States. *Tennessee v. Davis*, 100 U.S. 257, 258, 263-64 (1879); *Cohens v. Virginia*, 19 U.S. 264, 379 (1821).

I. Factual Background

In October 2005 Parent signed two mediation agreements with Defendant Inland Regional Center (IRC) whereby IRC agreed to provide autism treatment program for her daughter M.Z. at home with authorization of initial assessment in two weeks, and a reimbursement for diaper cost that incurred during which time IRC failed to sent authorization to its vendor.

In January 11, 2006, IRC's social worker mentioned its requirement of quarterly home visit at a meeting with Parent. Parent questioned. IRC said that was Medicaid's [5] requirement. Not believing that, Parent refused to consent, and asked for written regulation and law. IRC did not provide.

IRC did not apply for a warrant for its home visit. Instead on May 9, 2006, IRC sent letter to Parent threatening to inactivate M.Z.'s case if Parent

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[5] Section 1915 (c) of the Social Security Act enables states to request a waiver of applicable federal Medicaid requirements to provide enhanced community support services to those Medicaid beneficiaries who would otherwise require institutional care 42 U S C § 1396n(c), 42 C.F.R. § 441 300 et seq When a waiver applicant is a child, parental income and resources are not considered even though the child lives in the home M Z. was the only Medi-caid waiver recipient at this home Parent enrolled M Z to Medi-caid because in 2005, IRC notified Parent that it would terminate M Z 's diaper funding as Medi-caid may fund So Parent had to agree with IRC's referral M.Z to Medi-caid waiver, otherwise she would not continue to get diapers for M Z

would not allow home visit.[6] In reply, on May 12, 2006, Parent faxed IRC requesting again a copy of governmental regulation regarding the mandatory quarterly visit and a copy of IRC's policy about condition to inactivate case. IRC did not provide.

On Sept.15, 2006, Parent received letter addressed to her from IRC which threatened to inactivate her daughter's case if its social worker could not meet with Parent and M.Z. at her home in 30 days. On Sept.25, 2006, Parent faxed IRC that her letter serves as Hearing Request if IRC would inactivate M.Z.'s case, and allowed the home visit involuntarily.

On Oct.26, 2006, IRC's social worker Alice Chu visited Parent's home. She presented an IRC's document for Medi-caid Waiver facility management indicating that authorize quarterly home visit, shortly before she left. The next day, Parent faxed IRC questioning again RC's authority of home visit.

On Jan.1, 2007, M.Z.'s autism treatment service was terminated. On Feb. 22, 2007, an administrative hearing under the Lanterman Act was held. During the administrative hearing, IRC stipulated that M.Z.'s needs of service were not disputed, and the hearing officer found that M.Z.'s disability condition was not in dispute either. IRC asked the hearing officer to authorize its quarterly home visit. IRC presented the document for Medi-caid Waiver facility management, which requires quarterly face to face

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[6] None of these letters indicated that if Parent refused home visit, then the service might be provided at RC's facilities. None of these letters indicated that it wanted to observe the autism treatment service at home.

contact at facilities, as support for its quarterly home visit. RC also testified that the quarterly home visit was term of its contract with State. However when questioned, RC staff admitted that he never saw the Contract with State.

On Mar.1, 2007, Administrative Law Judge Roy Hewett issued his decision. The decision ordered Parent to sign IRC's IPP signature page[7] where the only service that IRC agreed to provide is quarterly surveillance. Specifically, the ALJ ordered Parent to allow RC quarterly visit places where services were provided. The decision noted that autism treatment service was provided at Parent's home under a mediation agreement.

Thereafter, IRC entered Parent's home quarterly until the third quarter of 2008. At that time, IRC was not funding any service for the family, IRC requested home visit and threatened to inactivate M.Z.'s case if it would not hear from Parent. Parent did not consent. IRC inactivated M.Z.'s case.

As discussed below, RC's quarterly home visits are not about assessments.

II. Procedural Background and Jurisdiction

On May 30, 2007, Petitioner sought review of the administrative hearing decision at state court, along with mediation agreement matter.

Nine months later, while defendant did not oppose to Parent's capacity or standing to sue, and Parent did not apply for court appointed attorney, the Superior Court appointed attorney Gilbert M.

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[7] IRC routinely did not present its document IPP when it required Parent to sign its signature page

Gutierrez[8] from its probate panel.

On May 6, 2008, the superior court held a hearing. The Court announced that the attorney was appointed for Parent. Attorney Gutierrez corrected immediately that he represented M.Z., not Parent. Despite that an attorney for minor is different from an attorney for parent; and does not fit the court's reasoning that a parent cannot represent her child, the Court kept the attorney anyway. The attorney requested for a court order to prohibit M.Z. from attending mediation. The Court granted over Parent's objection. IRC requested not to allow discovery on the ground that all evidence must be limited to administrative hearing record. The Court agreed.

On October 17, 2008, the Court acknowledged that the petition was Parent's case. (RT; 17: 9-12) (The COURT said to Parent: "Do you want the court to set a briefing schedule and a hearing date on your case? I will do that now. If you don't want to do that, I can dismiss your case.")

Parent timely filed Opening Brief, challenging the constitutionality of the Lanterman Act on her own behalf, and asserting M.Z.'s rights.

In March 2009, the superior Court denied Parent's petition for writ of mandamus on the ground that parent may not represent her child after excluding Parent's assertion of her own rights. Nevertheless, the court allowed parent to proceed to mediation agreement issue on breach of contract which Parent apparently had the same role with

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[8] No probate issue was involved in this case. The attorney did not argue or write any brief for M.Z

IRC. In May 2009, the superior Court entered judgment against Parent on the ground that the Lanterman Act and related regulation require Parent to be Regional Centers' vendor as prerequisite to get reimbursement even if there's no such term in the mediation agreements.

On Aug. 6, 2010, the Court of Appeal issued a tentative decision. Petitioner filed request for judicial notice about facts of home visit. On Aug. 17, the Court of Appeal acknowledged that the facts about home visit are in the records. On August 31, 2010, the Court of Appeal adopted the tentative decision and issued an unpublished opinion. Although the core of review of the administrative hearing decision is about violation of Parent's constitutional rights can been seen from the surface of the appeal, the Court of Appeal dismissed the appeal on the ground that "as the authorized representative for M.Z., Y.Z. still needs an attorney to assert claims on behalf of M.Z." (App.2a)

This Court is empowered to review "[f]inal judgments or degrees rendered by the highest court of a State in which a decision could be had" "where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution". 28 U.S.C. § 1257 (a)

A petition for review to California Supreme Court was denied on November 17, 2010. Thus, the Court of Appeal is the highest state court available to Petitioner. Further, the denial of the petition for review precludes the case from being reviewed by any other state tribunal. The Court of Appeal's

dismissal of Petitioner's appeal is final.[9] The validity of California's statute-the Lanterman Developmental Disabilities Services Act is drawn in question on the ground of its being repugnant to the Fourth and the Fourteenth Amendment of the U.S. Constitution.

A. Parent has presented the federal constitution question clearly on appeal. The appeal rested almost entirely on federal constitution.

Parent filed a notice of appeal on September 18, 2009. On appeal, Parent argued, almost entirely on the ground of U.S. Constitution.

The question presented on the appeal was: "Whether the Lanterman Act and/or related regulation, as interpreted, authorizing regional center to chill Parent's exercise of her constitutional rights violates the Fourteenth Amendment." (AOB; 7) Parent argued (1)"the core of this case is the violation of Parent's constitutional rights" (AOB; 12) "The trial court's upholding the administrative hearing decision would have the effect of inhibiting Constitution"; The refusal of home visit is Appellant's Fourth Amendment right and the Fourteenth Amendment.(AOB: 17-27, 33) "IRC's quarterly home visit violates Parent's Fourth and Fourteenth Amendment rights"; "RC's inactivation of M.Z.'s case is to chill Parent's exercise of her constitutional rights." (AOB; 17-27, 33) (2)"The due

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[9] The dismissal is with prejudice. "The dismissal of an appeal shall be with prejudice to the right to file another appeal within the time permitted, unless the dismissal is expressly made without prejudice to another appeal" Cal. Code Civ. Code Proc § 913

process clause does not permit a state to infringe on the fundamental right of parent to make childrearing decision"; "The Laterman Act's IPP provision has exceeded the bounds of the Due Process Clause"; "The statue is not substantially related to any goal for the benefit of the disabled because the method used to infringe families' liberty is inactivating their cases and terminating their needed service when their eligibility and need of service are not in question". (AOB; 33-37, 39) (3) Authorizing regional center to chill Parent's exercise of her constitutional rights, the act reveals that the core of California's regional Center System is surveillance that bypasses judicial system. (AOB; 37-40) (5)IRC shows great interest in invasion of privacy; IRC's home visit is not monitoring its funded program; and the Act's defect enables IRC to invade families' constitutional rights (AOB; 7-11, 15-17) (5) Keeping court appointed attorney to facilitate ex-part communication is not due process of law. (AOB; 12-14) (6)Parent's decision not to be IRC's vendor is exercise of her constitutional right. (AOB; 10)

This Court has adopted a presumption that when a state court decision fairly appears to rest on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion the Court will accept as the most reasonable explanation that the state court decided the case as it did because it believed that federal law required it to do so. If the state court wishes to avoid the presumption it must make clear by a plain statement in its judgment or opinion that discussed federal law did not compel the result, that state law was dispositive. *Michigan v. Long*, 463 U.S. 1032 (1983).

See *Harris v. Reed*, 489 U.S. 255, 261 n. 7 (1989); *Coleman v. Thompson*, 501 U.S. 722 (1991)

There is no plain statement in the Court of Appeal's opinion.

There's no independent and adequate state ground for the dismissal. The Court admitted that Parent may represent herself.

In *Hathorn v. Lovorn*, 457 U.S. 255 (1982), this Court found:

> "The Mississippi Supreme Court's decision did not rest on independent and adequate state grounds so as to bar this Court's review of the federal issue. ... Nor does the fact that petitioners' reliance upon the Voting Rights Act issue for the first time in their petition for rehearing may have been untimely under a Mississippi procedural rule constitute an independent and adequate state ground barring this Court's review of the federal question, where it appears that, if Mississippi still follows such a rule, it does not do so 'strictly or regularly.' "*Id.* at 255,256

"Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457, 458 (1958). See also *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964) (state procedural rules "not strictly or regularly followed" may not bar our review); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 297 (1964) (procedural rule no bar to our review when state court had never applied it with the "pointless severity shown here").

In *Des Moines Navigation & R. Co. v. Iowa Homestead Co.*, 123 U.S. 552 (1887), this Court stated:

> That question stood in the very front of the litigation, and if decided in favor of the navigation and railroad company, ended the whole matter. To give a judgment the other way without considering it was simply to ignore one of the most important elements of the case as it stood in the record. There can be no escape from this conclusion. ...Such action was, in our opinion, equivalent to a decision against the federal right which was actually set up and claimed, and thus our jurisdiction for the review of the judgment on this question, as well as the others, is complete. *Id.* at 555-556

B. The inquiry of whether the Lanterman Act violates constitution necessarily involves the question whether Parent has her own interest protected by the U.S. Constitution.

To decide whether a statute violates the due process clause of the Fourteenth Amendment and the Fourth Amendment, the first question is whether the party has interest protected by the Amendments from invasion by the States. See *Bates v. Little Rock*, 361 U.S. 516 (1960)

In dismissal, the court of appeal necessarily decided whether Parent has her own interest in the appeal. A state court of appeal judge should be presumed having the basic legal knowledge that in rendering judgment of dismissal, he has considered whether a party has standing to sue on herself.

In reaching the decree of dismissal, the Court of Appeal's decision necessarily means that Parent has no liberty interest protected by the Fourth and Fourteenth Amendments, which is against what Parent claimed in this case.

C. The decree of dismissal could not have rendered without deciding the constitutional question since Parent did not claim any right other than constitutional right on appeal.

"Whether the constitutional rights asserted by the Appellant were ...given due recognition by the [Court of Appeal] is a question as to which the [petitioner is] entitled to invoke our judgment, and this [he has] done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support.' " *Staub v. City of Baxley*, 355 U.S. 313, 318 -319 (1958) (quoting *Ward v. Love County Board of Comm'rs*, 253 U.S. 17, 22 (1920)

The Court of Appeal's decision's nonfederal ground is not tenable and is too narrow to sustain the state court decree. The threshold question in one's standing to sue is not based on whether she can sue on behalf others but whether she may sue on behalf herself. There's no law that asserting someone else's rights may result in dismissal if the party has her own rights. The Court of Appeal's decision is also analytically difficult that Parent has standing to sue, yet she may not sue without attorney. There's no law that requires someone to retain attorney for suit on behalf herself.

REASONS FOR GRANTING THE WRIT

Over two hundred years ago, in *Ex Parte Milligan*, 71 U.S. 2, 120-121 (4 Wall.) (1866), this Court wrote:

> "Time has proven the discernment of our ancestors, for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

Today, Defendant Inland Regional Center sought to avoid the clear words of the Fourth and Fourteenth Amendments, claiming that Parent has no interest when it warrantless entered her home without voluntary consent; penalize her for not

allowing its social worker to enter her home by inactivating her child's case; intervene her decision making to rear her child and her family life, all backed by the Lanterman Act which created such surveillance system without constitutional safeguard. The Court of Appeal agreed with Defendant. The Court of Appeal erred here.

Nullification of an unconstitutional state statute is ultimately the responsibility of this Court. The Petition for a Writ of Certiorari should be granted.

I. THE COURT OF APPEAL'S DECISION CONTRAVENES THIS COURT'S PRECEDENTS.

A. This Court's precedents shows that the liberty interest in the sanctity of one's home and the privacies of life were fully recognized and the protections guaranteed by the Fourth Amendment are much broader in scope.

The word "house" appears twice in the text of the Bill of Rights clearly indicated the concern of the founding fathers for the protection of liberty interest in the sanctity of home, and the family life therein.

While the Third Amendment prohibits, in time of peace, the quartering of soldiers in "any house without the consent of the owner", the Fourth Amendment specifically mentions "houses" as a place where person have a right "to be secure against unreasonable searches and seizures."

The Fourth Amendment origins from a strong public reaction to three cases from the 1760s which all involved governmental home entry. *Boyd v. United States*, 116 U.S. 616 (1886)

The two cases decided in England, *Wilkes v. Wood*,

19 Howell's State Trials 1153 (C.P. 1763), and *Entick v. Carrington*, 19 Howell's State Trials 1029 (C.P. 1765), involved pamphleteers charged with seditious libel for criticizing the king's ministers and the king himself. In both cases, agents of the king issued a warrant authorizing the ransacking of the pamphleteers' homes and the seizure of all their books and papers. These searches were duly carried out. Both Wilkes and Entick won.

Entick v. Carrington, this Court has said, is a "great judgment", "one of the landmarks of English liberty". *Boyd*, 116 U. S. at 626. This Court continued, "[a]s every American statesman, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the fourth amendment to the constitution, and were considered as sufficiently explanatory of what was meant."*Id.* at 626, 627

The third case was the Writs of Assistance Case. British revenue officers seeking to stamp out smuggling in colonial Boston were given blanket search warrants, called "writs of assistance", that permitted them to search anyplace where they thought smuggled goods might be. The writs also allowed the officers to compel private citizens to help them carry out the searches—hence the writs' name. The writs once issued remained in force throughout the lifetime of the sovereign and six months thereafter. In this case, "James Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English

law book;' since they placed 'the liberty of every man in the hands of every petty officer.' " *Boyed,* 116 U. S., at 625. This Court characterized the debate as "perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country." *Ibid.*

"These things, and the events which took place in England immediately following the argument about writs of assistance in Boston, were fresh in the memories of those who achieved our independence and established our form of government." *Id.*

"The purpose of these clear and precise words [in the Fourth Amendment] was to guarantee to the people of this Nation that they should forever be secure from the general searches and unrestrained seizures that had been a hated hallmark of colonial rule under the notorious writs of assistance of the British Crown." *Stanley v. Georgia* 394 U.S. 557, 569 (1969) (Stewart, J., concurring)

The protections guaranteed by the Fourth Amendment are much broader in scope.

This Court made clear in resounding terms that the principles reflected in the Fourth Amendment "reached farther than the concrete form" of the specific cases that gave it birth, and

> apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property.

Boyd, 116 U.S., at 630.

As Justice Brandeis explained in his dissent in *Olmstead v. United States*, 277 U. S. 438, 478 (1928):

> The makers of our Constitution understood the need to secure conditions favorable to the pursuit of happiness, and the protections guaranteed by this are much broader in scope, and include the right to life and an inviolate personality -- the right to be left alone -- the most comprehensive of rights and the right most valued by civilized men. The principle underlying the Fourth and Fifth Amendments is protection against invasions of the sanctities of a man's home and privacies of life. This is a recognition of the significance of man's spiritual nature, his feelings, and his intellect. Every violation of the right to privacy must be deemed a violation of the Fourth Amendment.

The basic purpose of the Fourth Amendment, as recognized in countless decisions of this Court, "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court*, 387 U.S. 523 (1967); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978); *Mapp v. Ohio*, 367 U.S. 643 (1961); See also *United States v. Chadwick*, 433 U. S. 1, 7-8 (1977) ("a fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests,")

There are certain decisions so personal that their protection is "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); *Griswold v. Connecticut*, 381 U.S. 479, 500 (1965) (Harlan, J., concurring.) "[P]rinciple of justice

so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts,* 291 U.S. 97, 105 (1934); *Brown v. Mississippi,* 297 U.S. 278, 285 (1936); *Michael H. v. Gerald D.*, 491 U.S. 110, 123 (1989)

"This Court has long recognized that freedom of personal choice in matters of ... family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LaFleur,* 414 U. S. 632, 639-640 (1974); *Roe v. Wade*, 410 U. S. 113 (1973); *Loving v. Virginia*, 388 U. S. 1, 12 (1967); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

As this Court noted, there is a "realm of family life which the state cannot enter" *Prince v. Massachusetts,* 321 U.S. 158 (1944); *Lawrence v. Texas,* 539 U.S. 558 (2003) "[M]matters relating to...family relationships, and child rearing and education" are "fundamental" and "[i]n these areas . . . there are limits on the state's power to substantively regulate conduct." *Paul v. Davis,*424 U.S. 693, 713 (1976).

This Court's solicitude for the family is also evident in the case of *Wisconsin v, Yoder* 406 U.S. 205 (1972) holding that a state compulsory education law could not be applied against the parents of Amish children against the wishes of the parents.

In 2000, the Court decided a case, *Troxel v. Granville,* 530 U.S. 57 (2000) challenging the constitutionality of a Washington law that allowed courts to order that parents provide time for visitation of their children by grandparents and others. A majority of the Court agreed with the

Washington Supreme Court that the law was facially invalid because it infringed upon the fundamental right of parents to raise their children.

This Court has long recognized that the Due Process Clause in the Fourteenth Amendment requires that "state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.' Those principles are applicable alike in all the states, and do not depend upon or vary with local legislation." *Hebert v. Louisiana*, 272 U.S. 312, 316-317 (1926) (See also *Castillo v. McConnico*, 168 U.S. 674, 682-683 (1898); *Pullman Co. v. Knott*, 235 U. S. 23, 25 (1914); *Enterprise Irrigation District v. Farmers' Mutual Canal Co.*, 243 U.S. 157, 166 (1917) *Brown v. Mississippi*, 297 U.S. 278, 286 (1936))

The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them and to deny access to its courts is also subject to restrictions imposed by the contract, full faith and credit, and privileges and immunities clauses of the Constitution. *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Angel v. Bullington*, 330 U.S. 183 (1947)

"[C]onstitutional provisions for the security of person and property should be liberally construed. . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd*, at 635.

B. The enhanced mandatory home visit ordered by administrative hearing officer is important surveillance tool of the Lanterman Act which adversely affected Parent's Fourth and Fourteenth Amendment rights..

"The justification must be genuine, not hypothesized or invented post hoc in response to litigation." *United States v. Virginia et al.* 518 U.S. 515, 533 (1995)

This is not a case where RC wanted Parent to consent its funded service, so that it would not provide unwanted service to the family Parent has consented in writing for the continuance of service at least annually to IRC. The administrative hearing record fully shows this. Besides, IRC's custom practice is to coerce unwanted service; e.g. parent training, particularly by unlicensed personnel.

Regional centers consist of extremely small portion of licensed professional that is qualified to determine an individual's disability condition. For all assessments that IRC funded, Parent was informed to go to regional center's facility or its vendors' facilities.

RC's quarterly home visits are not about monitoring its funded program either.

IRC's initial reason for home visit is that quarterly home visit is Medi-caid's requirement. But it refused to provide any law or regulation regarding Medi-caid's home visit requirement despite Parent repeatedly asked for it. IRC's threatening to inactivate M.Z.'s case as stated by IRC's notice to Parent was because Parent did not allow it to have home visit.

During the administrative hearing, IRC presented its document about management of Medi-Caid facilities to support its quarterly home visit.

Parent's home is owner occupied private residence. At no times has Parent ever received any Medi-Caid funds. Parent was never informed prior to enroll her child to Medi-caid Waiver [10], which consider the child's income only, that her home would be regarded as Medi-caid's property. And IRC was never able to cite any U.S. code about Medi-caid to support its quarterly home visit.

At no time prior to the administrative hearing did IRC mention its intention to observe its funded program at home, nor did it offer to move its program outside home if home entry was not allowed. Further, it did not document any observation of its funded program at home in its quarterly report, which was said the purpose of home visit.

In 2006, the service provider CARD held monthly clinic meetings at its facility at Temecula, where a Board Certified Behavior Analyst attended to review progress of M.Z. IRC never attended any such meeting.

Not only IRC never care how M.Z. was doing in its funded program, IRC even showed its intention to destroy M.Z.'s program. E.g., IRC's rate was high enough for credentialed professional, but it relieved its service provider from the responsibility to keep a credentialed professional to supervise the program since 2007.

Further, the Lanterman Act did not design the regional center system for the purpose to monitor

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[10] Parent is not a Medi-caid recipient.

quality of service provided by professionals. Regional centers' main workforce is social workers. As Frank D. Lanterman Regional Center acknowledged, "[r]egional center has limited capacity to ensure the quality of services it purchases for clients." *Sustaining The Entitlement For The Developmental Services System: A Regional Center Perspective*, 30 (Rev. 4/4/08) This is because

> While the Lanterman Act gives regional centers a general responsibility for monitoring the 'quality and cost-effectiveness" of services they purchase, their staffing patterns provide them with insufficient human resources to establish and carry out effective quality management programs. The core staffing formula used by DDS to determine funding for regional centers provides for two types of regional center employees whose activities are intended to address issues of quality. One is the fiscal monitor whose activities, while of great importance, are arguably unrelated to service quality. The other is quality assurance (QA) staff whose designated responsibilities relate only to monitoring the quality of licensed residential services."*Ibid.* "Service coordinators] generally have neither the skill set nor the focus to carry out a monitoring activity independently." *Ibid.*

Indeed, "a decision about whether a service is leading to achievement of the stated objectives is made on the basis of a progress report submitted to the regional center by the same [service] provider and reviewed by a regional center clinician." *Ibid.*

However, IRC does not require its service provider to provide progress report quarterly.

Besides, IRC not only does not allow service provider to provide progress report directly to Parent, but also repeatedly refusing or delaying to provide progress reports to Parent.

Regional Center's inability to monitor its program effectively can further be seen from *Morohoshi v. Pacific home* where the California Supreme Court reversed a lower court's opinion that "the regional center be held vicariously liable for the negligence of the residential care facility". *Morohoshi v. Pacific home* (2004) 34 Cal.4th 482, 20 Cal.Rptr.3d 890.

Indeed, regional center system is more akin to probation system. "Offenders under standard supervision are generally required to report to an officer, most commonly between biweekly and quarterly, and are subject to any other conditions as may have been ordered (as described above: treatment, community service, and so on)." http://en.wikipedia.org/wiki/Probation

It's doubted that anyone would voluntarily subject themselves into a probation system in order to get assistance in employment, housing, and education. Yet the Lanterman Act's regional center system has been in place for over 40 years, imposing waiving of constitutional rights on families of the disabilities including parents as condition for children to get needed service that they otherwise entitled.

All the time, IRC were unable to articulate what kind of state interest involved when it use the method of inactivating children's cases and terminating their needed services when their eligibility and need of service are not in question to force parents to waive their constitutional rights. There's wholly no compelling interest for state to

maintain such a system to invade the sphere of liberty protected by the Due Process Clause of the Fourteenth Amendment.

IRC's inactivation of M.Z.'s case was solely for the purpose to force parent to allow its home visit. As the Lanterman Act is the ground that IRC relied for its home visit, Parent certainly has standing to challenge its constitutionality, which affected her very own rights.

In *Boyd*, this Court stated: "although the owner of goods, sought to be forfeited by a proceeding in rem, is not the nominal party, he is, nevertheless, the substantial party to the suit; he certainly is so, after making claim and defense; and, in a case like the present, he is entitled to all the privileges." *Boyd v. United States*, 116 U.S. 616, 638 (1886)

The right to the sanctity of one's home and privacies of life is not waived merely because a parent chooses to have some benefit for her child. The Lanterman Act should be invalidated as it infringed parents' right to the sanctities of home and privacies of life secured by the Fourth Amendment in the area related to child rearing.

C. This Court's precedents show that a party may assert the rights of others whom she has confidential relationship in addition to her own rights.

In *Griswold v. Connecticut*, 381 U.S. 479 (1965), where a professional was permitted to assert the rights of married couples, this Court explained:

> This case is more akin to *Truax v. Raich*, 239 U.S. 33, where an employee was permitted to assert the rights of his employer; to *Pierce v. Society of Sisters*, 268 U.S. 510, where the

> owners of private schools were entitled to assert the rights of potential pupils and their parents, and to *Barrows v. Jackson*, 346 U.S. 249, where a white defendant, party to a racially restrictive covenant, who was being sued for damages by the covenantors because she had conveyed her property to Negroes, was allowed to raise the issue that enforcement of the covenant violated the rights of prospective Negro purchasers to equal protection, although no Negro was a party to the suit. *And see Meyer v. Nebraska*, 262 U.S. 390; *Adler v. Board of Education*, 342 U.S. 485; *NAACP v. Alabama*, 357 U.S. 449; *NAACP v. Button*, 371 U.S. 415. The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.

Id. at 481

In *Eisenstadt v. Baird*, 405 U.S. 438 (1972), this Court reemphasized the relationship: "the relationship between Baird and those whose rights he seeks to assert is not simply that between a distributor and potential distributees, but that between an advocate of the rights of persons to obtain contraceptives and those desirous of doing so." *Id.* at 445

In Meyer v. Nebraska, 262 U.S. 390 (1923), a teacher whose right directly affected by statute may assert parents' constitutional right to be free from unreasonable governmental intrusion; *See also Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969) (white assignor of membership in discriminatory

private club could raise rights of black assignee in seeking relief for expulsion from club). *Doe v. Bolton*, 410 U.S. 179, 188–189 (1973) (doctors have standing to challenge abortion statute since it operates directly against them and they should not have to await criminal prosecution in order to determine their validity); *Planned Parenthood v. Danforth*, 428 U.S. 52, 62 (1976) (same); *Craig v. Boren*, 429 U.S. 190, 192–197 (1976) (licensed beer distributor could contest sex discriminatory alcohol laws because it operated on him, he suffered injury in fact, and was "obvious claimant" to raise issue); *Holland v. Illinois*, 493 U.S. 474 (1990) (white defendant had standing to raise a Sixth Amendment challenge to exclusion of blacks from his jury, since defendant had a right to a jury comprised of a fair cross section of the community)

In *Truax v. Raich*, 239 U.S. 33 (1915) where the employee sued when the employer was convicted, this Court found, "The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will." *Id.* at 38. This Court reasoned, "the act undertakes to operate directly upon the employment of aliens, and, if enforced, would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting of the requirements of the act and avoiding threatened prosecution under its provisions." *Id.* at 38, 39

In *Bantam Books v. Sullivan*, 372 U.S. 58 (1963), publishers are permitted to assert the rights of distributers. This Court found:

> [A]ppellants are not in the position of mere proxies arguing another's constitutional rights. ... the direct and obviously intended result of the Commission's activities was to curtail the circulation in Rhode Island of books published by appellants.

Id. at footnote 6

The relationship between a child and her parents is certainly no less intimate than the relationship specified in the above precedents. Particulary, the rights of a child and the rights of her parents, "do not lend themselves to neat separation." *Bullock v. Carter*, 405 U.S. 134, 143 (1972) Laws that affect children "always have at least some theoretical, correlative effect on" parents. *Ibid.*

Indeed, the Lanterman Act aims to operate directly upon families of the disabilities including parents. And as enforced, by terminating her child's needed service as threatening directly infringed their fundamental rights protected by the Fourth Amendment and Fourteenth Amendment, and traditional interest in child rearing.

The Court of Appeal's dismissal on the ground that M.Z' will benefit from Parent's appeal, and thus denied that Parent has liberty interest under the Fourth and Fourteenth amendment contravenes this Court's precedents.

The Court appointed attorney's contention against Parent and M.Z may not be ground to bar Parent from asserting her constitutional rights either.

The Court appointed attorney's contention that the case has no merit is not valid. He may not represent a child without guardian. California Law expressively provides: "When a minor, ...is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case." Cal. Code Civ. Proc. § 372(a)

D. The law must be 'closely scrutinized" when it has impact on fundamental rights.

Strict scrutinize standard shall apply as the Lanterman Act impact the fundamental rights under the Fourth and the Fourteenth Amendments. See *Bullock v. Carter*, 405 U.S. 134, 144 (1972)

> "Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we conclude, as in Harper, that the laws must be 'closely scrutinized' and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster."

See also *Carey v. Population Services International*, 431 U.S., 678, 686 (1977) ; *Memorial Hospital v. Maricopa County*, 415 U.S , 250, 262-263 (1974); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S., 1, 16 -17 (1973);

> Where certain 'fundamental rights' are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," *Kramer v. Union*

Free School District, 395 U. S. 621, 395 U. S. 627 (1969); *Shapiro v. Thompson,* 394 U. S. 618, 394 U. S. 634 (1969), *Sherbert v. Verner,* 374 U. S. 398, 374 U. S. 406 (1963), ..*Griswold v. Connecticut,* 381 U.S. at 381 U. S. 485; *Aptheker v. Secretary of State,* 378 U. S. 500, 378 U. S. 508 (1964); *Cantwell v. Connecticut,* 310 U. S. 296, 310 U. S. 307-308 (1940); *see Eisenstadt v. Baird,* 405 U.S. at 405 U. S. 460 463-464 (WHITE, J., concurring in result).

Roe v. Wade, 410 U.S.113, 155-156 (1973)

The legislature enactment is not narrowly drawn to express only the legitimate state interests at stake. Indeed there's no legitimate state interest at all to use the method of inactivating a child's case and terminating her needed service to coerce parents to waive their constitutional rights.

The statute is in its broad sweep regulates family relationship on its face.

The evidence against appellant is she questioned defendant's authority to conduct quarterly home visit, and that resulted in her daughter's case inactivated and service terminated.

"A statute which upon its face, and authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." *Stromberg v. California*, 283 U.S. 359, 369 (1931)

The Lanterman Act's home visit requirement would gravely endanger if not destroy exercise of the Fourth and Fourteenth Amendment.

Consent under coercion is not voluntary to waive constitutional rights.

Constitutional rights are not waived when the officer asserts his official status and claim of right and the occupant yields to these factors rather than makes his own determination to admit officers. See *Bumper v. North Carolina*, 391 U.S. 543 (1968) (A search cannot be justified as lawful on the basis of consent when that "consent" has been given only after the official conducting the search has asserted that he possesses a warrant; there is no consent under such circumstances); *Johnson v. United States*, 333 U.S. 10, 13 (1948) (Entry to defendant's living quarters, was demanded under color of office. It was granted in submission to authority, rather than as an understanding and intentional waiver of a constitutional right); *Amos v. United States*, 255 U.S. 313, 317(1921) (The act of a man's wife in allowing government officers to enter his home without a warrant upon their demand for admission for the purpose of making a search is *held* not to be a waiver of his constitutional privilege against unreasonable search and seizure, even assuming that a wife may waive her husband's right in that regard.)

In *Fay v. Noia*, 372 U.S. 391, 439 (1963), this Court noticed:

> Were it otherwise, as conduct under duress involves a choice, it always would be possible for a State to impose an unconstitutional burden by the threat of penalties worse than it in case of a failure to accept it, and then to declare the acceptance voluntary, as was attempted in Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor, 223 U.S. 280 , 32 Sup. Ct. 216, Ann. Cas. 1913C, 1050" *Union Pac. R. Co. v. Public Service Commission Of Missouri*, 248 U.S. 67, 70 (1918)"

A parent's consent under the threatening of inactivating her child's case, terminating her child's needed service, is not voluntary as to waive her constitutional rights. See *Thompson v. North American Stainless, LP*, 562 U. S. ____ (2011) (With regard to "relationships for which third-party reprisals are unlawful. We expect that firing a close family member will almost always meet the *Burlington* standard")

"And even those who can be persuaded to meet the statute's requirements suffer a serious intrusion into their freedom of choice in an area in which we have held such freedom to be fundamental." *Zablocki v. Redhail* 434 U.S. 374 (1978)

"It is too late in the day to doubt that the liberties ... may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Sherbert v. Verner*, 374 U.S. 398,404 (1963); See also *Speiser v. Randall*, 357 U. S. 513, 526(1958) (Conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, is to inhibit or deter the exercise of constitutional rights, and thereby threatened to "produce a result which the State could not command directly.")

State's interest in Welfare 'is not free from a balancing process when it impinges on fundamental rights such as those specifically protected" by the Fourth "Amendment and the traditional interest of parents with respect to the [ ] upbringing of their children." *Wisconsin v, Yoder* 406 U.S. 205 (1972)

The Lanterman Act that backing the administrative hearing decision has adversely affected Parent's Fourth and Fourteenth Amendment rights. To claim that Parent has no

interest protected by the Constitution in the zone of welfare, the Court of Appeal's decision contravenes this court's precedents.

The Lanterman Act should be invalidated as it infringed parent's right to the sanctities of home and privacies of life secured by the Fourth and Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted to set aside the judgment of the Court of Appeal.

Respectfully submitted,

Yiling Zhang
Petitioner in Pro Per

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